

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

FRANK R. ESPOSITO

Claim No. CU-2083

Decision No. CU 4226

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$90,000.00, was presented by FRANK R. ESPOSITO and is based upon the asserted loss of certain real and personal properties in Cuba including securities in a Cuban corporation. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides: .

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant states that he lived in Cuba from 1947 to August 1960, and that certain properties including a 6 room apartment, a 5 room beach home, appliances, furnishings, furniture and clothing contained therein, and securities in a Cuban corporation known as the Paint Pot, S.A. (known in the Spanish language as Compania Pinturas El Pote S.A.) were taken by the Cuban Government between August 1960 and 1961.

In support of the claim, claimant submitted a copy of a constitution of a corporation (lacking pages 2 to 9) prepared in Havana, Cuba in January 1955 indicating the formation of a Havana business enterprise between himself and others, and photocopies of 2 stock certificates for 28 shares each, issued to him by The Paint Pot, S. A. in Havana on April 1, 1955 and June 30, 1955. He also submitted photocopies of portion of two contracts, apparently for realty, several pages being missing therefrom.

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By Commission letter of July 5, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act.

On September 19, 1967 claimant was invited to submit any evidence available to him within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. On October 4, 1968 claimant was informed of the reduction in the Commission's staff and reminded of the elements to be established. No additional evidence has been submitted.

Moreover, claimant filed another claim with the Commission on behalf of The Paint Pot, S. A. on May 1, 1967 (Claim No. CU-2791) which was denied for failure to meet the burden of proof including the failure to establish that The Paint Pot, S. A. qualified as a "national of the United States" within the meaning of the Act.

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The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interest in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

NOV 26 1969

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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